

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MALGORZATA DELINOWSKI,

Plaintiff,

- against -

MDS HVAC-R INC. and PATRICK BRUSH,

Defendants.
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Civil Action No.

**COMPLAINT AND
JURY DEMAND**

Trial by Jury Demanded

Plaintiff, MALGORZATA DELINOWSKI, by her attorneys HAICKEN LAW PLLC as
and for her Complaint against the Defendants, MDS HVAC-R INC. and PATRICK BRUSH,
alleges that at all times hereinafter mentioned:

1. Plaintiff MALGORZATA DELINOWSKI is a citizen of the State of New Jersey.
2. Defendant, MDS HVAC-R INC., an air-conditioning and heating contractor, is a domestic business corporation organized and existing under the laws of the State of New York with its principal place of business at 192 Plains Road, Walden, New York 12586, County of Orange.
3. Defendant MDS HVAC-R INC., is doing business in the State of New York.
4. Defendant PATRICK BRUSH is a citizen of the State of New York and resides in Orange County.
5. The matter in controversy exceeds the sum of \$75,000 exclusive of costs and interest.
6. This Court has jurisdiction pursuant to 28 U.S.C. §1332 (a) by virtue of the diversity of citizenship of the parties and the amount in controversy.
7. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) (1).

8. On July 17, 2021, Defendant MDS HVAC-R INC., owned, leased, controlled, managed, maintained and/or repaired a certain 2019 Freightliner, bearing New York State License Plate No. 96716MM.

9. On July 17, 2021 Defendant PATRICK BRUSH operated, leased, controlled, managed, maintained and/or repaired a certain 2019 Freightliner, bearing New York State License Plate No. 96716MM.

10. On July 17, 2021 Defendant PATRICK BRUSH operated the aforementioned Freightliner with the knowledge, permission and consent of Defendant MDS HVAC-R INC.

11. On July 17, 2021 Defendant PATRICK BRUSH was employed by Defendant MDS HVAC-R INC.

12. On July 17, 2021 Defendant PATRICK BRUSH was acting within the scope of his employment with Defendant MDS HVAC-R INC. while operating said Freightliner.

13. On July 17, 2021 Plaintiff was the owner and operator of a certain 2019 Honda motor vehicle bearing New Jersey State License Plate No. Z16LPR.

14. On July 17, 2021 the roadway known as Interstate 87, Town of New Windsor, New Windsor, New York was and still is a public thoroughfare.

15. At said time and place, there was contact between the Freightliner operated by Defendant PATRICK BRUSH and the motor vehicle being operated by Plaintiff.

16. At said time and place, the Freightliner operated by Defendant PATRICK BRUSH crashed into the rear of the motor vehicle being operated by Plaintiff.

17. As a direct and proximate result of the negligence of Defendants, Plaintiff MALGORZATA DELINOWSKI was caused to suffer serious and permanent personal injuries.

18. The Defendants were negligent, careless and reckless in the ownership, operation, leasing, management, maintenance, control, repair and/or inspection of the aforementioned Freightliner; in negligently, carelessly and recklessly operating the Freightliner at a rate of speed greater than was reasonable and proper at the time and place of the occurrence; in following Plaintiff's motor vehicle too closely; in negligently, carelessly and recklessly striking Plaintiff's motor vehicle; in failing to keep a proper distance between the Freightliner and Plaintiff's motor vehicle; in losing control of the Freightliner; in failing to observe Plaintiff's motor vehicle prior to the accident; in failing to observe traffic and driving conditions then and there existing at the place and time of the occurrence complained of; in failing to operate the Freightliner with that degree of care and caution necessary under said traffic and driving conditions; in failing to properly steer, guide, manage and control the Freightliner; in failing to sound the horn or otherwise to warn of the impending danger; in failing to give adequate and timely signal, notice or warning; in operating the Freightliner without due regard to the rights and safety of other persons, and especially for the safety of the Plaintiff herein; in failing to timely apply the brakes, slow down or stop in such a manner so as to avoid said occurrence; in failing to keep the Freightliner in proper operating condition; in failing to inspect said Freightliner for latent and patent defects; and the Defendants were otherwise careless, negligent and reckless under the circumstances then and there existing.

19. That Defendant MDS HVAC-R INC. is vicariously liable for the negligent, reckless and careless operation, leasing, control, management, maintenance and/or repair of the aforementioned Freightliner by its employee, PATRICK BRUSH.

20. That by reason of the foregoing, this Plaintiff MALGORZATA DELINOWSKI sustained a serious injury, as defined in Insurance Law Section 5102(d), and has sustained economic loss greater than basic economic loss as defined in Insurance Law Section 5102(d).

21. This action falls within one or more of the exceptions set forth in CPLR §1602.

22. By reason of the foregoing, the Plaintiff MALGORZATA DELINOWSKI sustained severe injuries and damages, including but not limited to nerve damage of the cervical and lumbar spine requiring epidural injections, was rendered sick, sore, lame and disabled, sustained severe pain and mental anguish, great physical and emotional upset all of which injuries are permanent in both nature and duration, and has and will continue to suffer pain and suffering, both physical and emotional, and has incurred, and will continue to incur medical expenses and lost earnings, all to her damage in a sum that exceeds \$75,000.00.

23. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff, MALGORZATA DELINOWSKI demands trial by jury in this action of all issues so triable.

WHEREFORE Plaintiff, MALGORZATA DELINOWSKI, respectfully requests that the Court grant relief as follows:

Awarding damages to Plaintiff, MALGORZATA DELINOWSKI

- I. for past and future medical expenses, personal injuries and pain and suffering in the total amount of Five Million Dollars (\$5,000,000),
- II. the costs of this action and for
- III. Such other and further relief as the Court may deem just and proper under the circumstances.

Dated: New York, New York
January 26, 2022

Yours, etc.,

HAICKEN LAW PLLC

Matthew Haicken, Esq.

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